



attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline G (Alcohol Consumption) of the Adjudicative Guidelines.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. The individual entered 15 exhibits (Exhibits A-O) into the record. At the hearing, the individual testified on his own behalf and also presented the testimony of a friend (Friend) and the Friend's spouse (Friend's Spouse), a long-time close friend (Friend 2), and his counselor (Counselor). The DOE submitted 11 exhibits (Exhibits 1-11) into the record and presented the testimony of the DOE Psychologist. The exhibits will be cited in the Decision as "Ex." followed by the appropriate numeric or alphabetic designation.

## **II. Regulatory Standard**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the regulations require me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual's eligibility for an access authorization. In describing the derogatory information, the LSO cited Guideline G of the Adjudicative Guidelines. The LSO referenced as Guideline G derogatory information a report (Report) issued by the DOE Psychologist opining that the individual suffered from Alcohol Use Disorder, Mild, and that the individual had not demonstrated adequate rehabilitation or reformation. Also cited were statements regarding the individual's alcohol misuse that the individual made during the PSI.

I have reviewed the exhibits and find that the LSO had sufficient grounds to invoke Guideline G in this case. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicatory Guideline G at ¶ 21.

#### **IV. Findings of Facts**

The individual does not dispute the factual allegations in the Notification Letter which are detailed below and are adopted as my findings of facts. Tr. at 54.

On April 29, 2017, the individual was arrested by local police for two alcohol-related driving offenses including DUI. Ex. 4; Ex. 5; Ex. 6. Three breathalyzer tests administered to the individual at the time of the arrest indicated the presence of alcohol on the individual's breath at the levels of 0.20g, 0.19g, and 0.189g per 210l which are all above the legal limit (0.08g per 210l) for operating a vehicle. Ex. 4 at 2; Ex. 10 at 9.

The LSO conducted a PSI with the individual in June 2017. Ex. 10. During the interview, the individual stated his belief that he had a problem with his alcohol consumption based upon his April 2017 arrest for DUI. Ex. 10 at 71. The individual admitted during the PSI that he had again consumed alcohol to the point of intoxication in June 2017. Ex. 10 at 71. The individual also confirmed during the PSI that in October 2011, he was admitted to a hospital for alcohol intoxication after passing out. Ex. 10 at 27-28. The individual also stated his belief that prior to his admission to the hospital, he had consumed "an excessive amount" of beer and whiskey. Ex. 10 at 41.

The individual was examined by the DOE Psychologist in May 2017. Ex. 7. In August 2017, the DOE Psychologist issued a written report (Report) outlining his diagnostic findings regarding the individual. Ex. 7. The DOE Psychologist found that the individual met the criteria for a diagnosis of Alcohol Use Disorder as described in the *Diagnostic and Statistical Manual of the American Psychiatric Association, 5<sup>th</sup> Edition* (DSM-5). Ex. 7 at 14. The DOE Psychologist also found that the individual's Alcohol Use Disorder was a mental condition that could impair his judgment, reliability or trustworthiness. Ex. 7 at 15. The DOE Psychologist determined that, for the individual to demonstrate adequate evidence of rehabilitation or reformation, the individual should complete one year of sobriety from alcohol and complete an outpatient substance abuse treatment program. Ex. 7 at 15.

#### **V. Analysis**

I have thoroughly considered the record of this proceeding, including the exhibits and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. The Guideline G security concerns center on the individual's arrest for DUI and the DOE Psychologist's determination that the individual suffers from Alcohol Use Disorder. The individual has presented evidence to try to establish that he is now rehabilitated and reformed from his alcohol problem. After due deliberation, I find that the individual's DOE security clearance should not be restored. The relevant evidence and my specific findings in support of this decision are discussed below.

In his testimony, the individual confirmed the accuracy of the derogatory information described in the Notification Letter. Tr. at 54. The individual testified that he joined the U.S. Army in 2009. Tr. at 54. After leaving the military in 2015, the individual would consume alcohol approximately twice a month. Tr. at 59. On the day of his April 2017 DUI arrest, the individual went to a bar to play a game of pool and have a drink. Tr. at 60. While at the bar he saw a number of friends he met in high school and he began to consume additional alcohol. Tr. at 60. The individual was later arrested for DUI after he left the bar. *See* Ex. 10 at 14.

After the DUI, the individual resolved to stop consuming alcohol. In June 2017, while attending a two-week reserve military training session, the individual was invited to a bar to have a few drinks with a friend who was leaving their unit. Tr. at 64. He did not believe that consuming alcohol would be an issue because he believed that the real concern was making a decision to drive after consuming alcohol. Tr. at 64. He decided to consume alcohol on this occasion because there was no possibility that he would be driving. Tr. at 64-65. On this occasion, the individual testified that he consumed four beers. Tr. at 65. The individual also testified that he consumed one gin and tonic in August 2017 on the occasion of his brother's wedding. Tr. at 65. The following day, the individual began participation in a substance abuse treatment center program for veterans.<sup>3</sup> Tr. at 68.

The individual recounted that, when he entered the program, he was informed that he would be required to abstain from alcohol or illegal drugs. Tr. at 65. The program has a curriculum and associated printed educational material which informs the participants about the effects of alcohol and the effects alcohol can have on the participants' families and friends. Tr. at 68. Additionally, the individual testified that the program teaches the participants how alcohol disorders can stem from various problems in a person's life and helps the participants to examine if they have any particular "triggers" that can lead to excessive alcohol use. Tr. at 68-69. As a result of the program, the individual believes that being in situations where his friends are consuming alcohol can lead to him wanting to consume alcohol. Tr. at 69. The program itself does not utilize Alcoholics Anonymous (AA) meetings although some participants have AA sponsors. Tr. at 68. The individual completed the educational and group segment of the treatment program approximately one week before the hearing and currently attends one AA meeting a week.<sup>4</sup> Tr. at 95. Because the individual attends college and is employed, he has limited opportunities to attend additional AA meetings. Tr. at 95.

With regard to whether he believes he has a problem with alcohol, the individual testified that he sometimes has mixed feelings.<sup>5</sup> Tr. at 93. However, the individual is committed to not consuming alcohol regardless of whether he subjectively believes that he has an alcohol problem. Tr. at 93.

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<sup>3</sup> This local "Veteran's Court" monitored treatment program is offered by a judge to qualified veterans who have been involved with a DUI arrest. Tr. at 73. Upon successful completion of the treatment program, the underlying DUI arrest is expunged. Tr. at 73-74.

<sup>4</sup> After completing the program, participants are required to be subject to random urinalysis testing for another six months. Tr. at 83.

<sup>5</sup> When pressed on examination on this issue, the individual testified that he has an alcohol problem but stated that, because he does not intend to consume alcohol in the future, he does not have an "active" alcohol problem. Tr. at 94.

The individual also submitted alcohol testing records from his treatment program, all of which indicate that the individual has not consumed alcohol or illegal drugs since August 2017. Ex. H (test results from August 2017 to February 2018). Additionally, the individual entered as exhibits records from the center confirming his attendance and completion of the educational and group segment of the treatment program. Ex. G.

The Counselor is a licensed substance abuse counselor at the individual's treatment program. Tr. at 73-74. The Counselor testified that he is responsible for the individual's drug treatment at the program. Tr. at 73. The program initially consists of three 90-minute drug and alcohol counseling groups per week which use a curriculum based upon three books specified by the State. Tr. at 74. Additionally, each participant attends a monthly 50-minute individual session. Tr. at 74.

While participating in the program, the individual was diagnosed as suffering from Alcohol Abuse, as described in the *Diagnostic and Statistical Manual of the American Psychiatric Association, 4<sup>th</sup> Edition*.<sup>6</sup> Tr. at 77. The Counselor found that the individual did not suffer from any other mental illness. Tr. at 79.

The individual complied with all treatment requirements and successfully completed the educational and group segment of the treatment program in March 2018. Tr. at 81, 83. The Counselor cited the individual's willingness to participate in group meetings and willingness to help other participants in the program as evidence of the individual's success in the program. Tr. at 82-83, 89. The Counselor testified that the individual informed him of his intention to continue going to AA meetings. Tr. at 85. In assessing the individual's risk of relapse, the Counselor opined that he had "a really good feeling" about the individual's risk and that the individual had a "very good chance" of staying sober. Tr. at 89-90. The individual mentioned to the Counselor that he had learned much about himself through the treatment program and that he learned not to get behind the wheel of a car after consuming alcohol. Tr. at 89-90. Specifically, the Counselor testified that the DUI and the associated consequences had scared the individual sufficiently to ensure that the individual would remain sober. Tr. at 89.

The Friend, the Friend's Spouse, and Friend 2 all testified that they have not seen the individual consume alcohol since his DUI arrest. Tr. at 16, 30, 42. The Friend's Spouse and Friend 2 have been with the individual during various social events and testified that the individual had not experienced any problems in abstaining from alcohol during these events. Tr. at 30, 42. Neither the Friend, nor the Friend's Spouse, observed the individual consume excessive amounts of alcohol in the period prior to the April 2017 DUI. Tr. at 16, 31. Friend 2 testified that in the prior three years, he had rarely observed the individual consume an excessive amount of alcohol beyond two or three beers. Tr. at 40-41. The Friend and the Friend's Spouse testified to the individual's good judgment, reliability and trustworthiness. Tr. at 22, 36. Friend 2 testified as to his belief that the individual is very trustworthy and "always sticks to his word." Tr. at 50.

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He believes that if he would again start to consume alcohol, his alcohol consumption could easily become a problem. Tr. at 94.

<sup>6</sup> The treatment program does not utilize the most current diagnostic guide, the DSM-5. Tr. at 77.

The DOE Psychologist testified about his initial examination findings and reaffirmed his diagnosis of the individual as suffering from Alcohol Use Disorder, Mild, under the DSM-5. Tr. at 129. He found that the individual met two of the criteria for the diagnosis – that the individual had been arrested for DUI and that he had admitted that he had consumed more alcohol than he had intended on several occasions, resulting in memory blackouts and being hospitalized for alcohol intoxication. Tr. 128-29.

After listening to all of the testimony offered at the hearing, the DOE Psychologist opined that the individual was doing a “good job” at maintaining his sobriety and was making significant progress for making a future without alcohol. Tr. at 123-24. He also found it significant that the individual was able to maintain his sobriety during the 2017 year-end holiday season. Tr. at 124. After listening to the Counselor’s testimony regarding the individual’s treatment program, the DOE Psychologist found that the individual had put a great deal of effort into the program and that overall he had no concerns about the adequacy of the treatment program. Tr. at 131. The DOE Psychologist found that the individual’s prognosis was “pretty good.” Tr. at 134. However, because of the relative shortness of the individual’s period of abstinence, approximately seven months, the DOE Psychologist found that the individual had “some risk” of relapse. Tr. at 136. The DOE Psychologist stated his belief that successful completion of a year of abstinence would reduce this risk. Tr. at 131.

In reviewing the evidence presented, I find that the individual has successfully completed the educational and group segment of his treatment program and is now subject to the program’s testing requirements for the next six months. Both the Counselor and the DOE Psychologist agree with this assessment.

While the individual presented testimonial evidence from the Friend, the Friend’s Spouse, and Friend 2 regarding his character, it appears that they were not fully aware of the extent of the individual’s alcohol consumption. All three testified that they had not seen the individual consume alcohol since his DUI arrest in April 2017; however, the individual has acknowledged that he became intoxicated in June 2017, and that he consumed alcohol again in August 2017.

There is convincing evidence in the record confirming the individual’s current period of abstinence. The only real issue centers whether the length of the individual’s current period of abstinence is sufficient to ensure that the potential risk of relapse is sufficiently low enough to merit the restoring of the individual’s security clearance.

Despite the relatively favorable prognostic assessment given by the Counselor, I give greater weight to the DOE Psychologist’s opinion that the individual has not demonstrated a sufficient period of abstinence by which he may be considered rehabilitated. The individual, at of the date of the hearing, has completed slightly more than one-half of the recommended period of abstinence of one year.

The record reflects (as noted previously) that the individual has been arrested for DUI, and has suffered from memory blackouts and being hospitalized for alcohol intoxication. Despite this, it is clear from the record that the individual is somewhat ambivalent about acceptance of the fact that he has an alcohol problem. As noted, when pressed on examination on this issue, the individual testified that he has an alcohol problem but, stated that, because he does not intend to

consume alcohol in the future, he does not have an “active” alcohol problem. This ambivalence gives me somewhat less assurance about the possibility of the individual relapsing into alcohol misuse.

The mitigating factor outlined in Guideline G, ¶ 23 (c), is arguably applicable in this case. It states that security concerns may be mitigated if “the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program.” Nonetheless, I find that this mitigating factor does not outweigh the clinical assessment of the DOE psychologist, who explicitly stated that the individual has not demonstrated a sufficient period of abstinence by which he may be considered rehabilitated.

While the individual has made significant progress in addressing his alcohol misuse problem, I find that he has not presented sufficient evidence to totally resolve the Guideline G security concerns raised in the Notification Letter.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Guideline G. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has not brought forth sufficient evidence to resolve the security concerns associated with those guidelines. I therefore cannot find that restoring the individual’s DOE access authorization would not endanger the common defense and would be clearly consistent with the national interest. See 10 C.F.R. § 710.27(d). Accordingly, I have determined that the DOE should not restore the individual’s DOE access authorization.

Richard A. Cronin, Jr.  
Administrative Judge  
Office of Hearings and Appeals